

Senate Bill No. 723

CHAPTER 486

An act to amend Section 6608.5 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 723, Denham. Sexually violent predators: conditional release program.

Existing law requires the Director of Corrections, prior to the release of a person from custody who has been convicted for certain crimes of a sexual nature against 2 or more victims, to refer the person to the State Department of Mental Health for evaluation. Existing law authorizes civil commitment, as a sexually violent predator, to the custody of the State Department of Mental Health for treatment of the person's diagnosed mental disorder if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

Existing law permits conditional release for one year of community treatment if, after a hearing, the court determines that the committed person does not pose a danger. Existing law requires that a nonparolee who is conditionally released under these provisions be placed in the county of domicile, as defined, unless the court finds that extraordinary circumstances require otherwise.

Existing law establishes provisions regulating the conditions for community release of inmates on parole.

This bill would, notwithstanding any provision of law, prohibit sexually violent predators released under the conditional release program from being placed within $\frac{1}{4}$ mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has been convicted of certain offenses or the court finds that the person has a history of improper sexual conduct with children.

This bill would incorporate additional changes in Section 6608.5 of the Welfare and Institutions Code, to become operative only if AB 893 and this bill are both chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 6608.5 of the Welfare and Institutions Code is amended to read:

6608.5. (a) A person who is conditionally released pursuant to this article shall be placed in the county of domicile of the person prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

(b) (1) For the purposes of this section, "county of domicile" means the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or information contained in an arrest record, probation officer's report, trial transcript, or other court document. If no information can be identified or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.

(2) In a case where the person committed a crime while being held for treatment in a state hospital, or while being confined in a state prison or local jail facility, the county wherein that facility was located shall not be considered the county of domicile unless the person resided in that county prior to being housed in the hospital, prison, or jail.

(c) For the purposes of this section, "extraordinary circumstances" means circumstances that would inordinately limit the department's ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code.

(d) The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person's potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) The department shall take into consideration victim or victim next of kin concerns and proximity when recommending specific placement for community outpatient treatment.

(f) Notwithstanding any other provision of law, a person released under this section shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if either of the following conditions exist:

(1) The person has previously been convicted of a violation of Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 of, the Penal Code.

(2) The court finds that the person has a history of improper sexual conduct with children.

SEC. 1.5. Section 6608.5 of the Welfare and Institutions Code is amended to read:

6608.5. (a) A person who is conditionally released pursuant to this article shall be placed in the county of the domicile of the person prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

(b) (1) For the purposes of this section, "county of domicile" means the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or information contained in an arrest record, probation officer's report, trial transcript, or other court document. If no information can be identified or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.

(2) In a case where the person committed a crime while being held for treatment in a state hospital, or while being confined in a state prison or local jail facility, the county wherein that facility was located shall not be considered the county of domicile unless the person resided in that county prior to being housed in the hospital, prison, or jail.

(c) For the purposes of this section, "extraordinary circumstances" means circumstances that would inordinately limit the department's ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code.

(d) The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person's potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) In recommending a specific placement for community outpatient treatment, the department or its designee shall consider all of the following:

(1) The concerns and proximity of the victim or the victim's next of kin.

(2) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. For purposes of this subdivision, the "profile" of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics.

(f) Notwithstanding any other provision of law, a person released under this section shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if either of the following conditions exist:

(1) The person has previously been convicted of a violation of Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 of, the Penal Code.

(2) The court finds that the person has a history of improper sexual conduct with children.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 6608.5 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 893. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 6608.5 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 893, in which case Section 1 of this bill shall not become operative.